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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,

Plaintiff-Respondent,

vs.

LANDON BLAKE WEST,

Defendant-Appellant.

NO. 38802

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA**

**HONORABLE RICHARD D. GREENWOOD
District Judge**

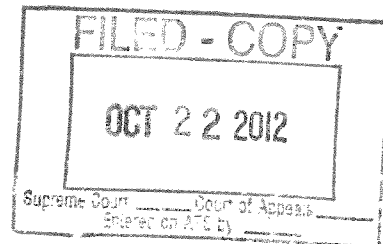
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STATEMENT OF THE CASE

Nature of the Case

Landon Blake West appeals from his judgment of conviction, asserting that the district court erred by denying his motion to suppress evidence.

Statement of the Facts and Course of the Proceedings

On July 22, 2010, at around 8:30 p.m., Officer Andreoli enforced a traffic stop on a vehicle he observed leaving a known drug house for failing to properly signal. (Tr., p.6, L.9 – p.7, L.20; p.8, Ls.11-25.) Upon contacting West, the vehicle's driver, Officer Andreoli observed that West was acting excessively nervous with his hands visibly shaking, had only recently lit a cigarette, which the officer knew from his experience could be used to mask other odors from drugs and alcohol, and was wearing a medallion associated with marijuana use. (Tr., p.10, Ls.5-21; p.11, Ls.7-22; p.11, L.23 – p.12, L.8.) Officer Andreoli requested dispatch to send a canine unit to the scene. (Tr., p.13, Ls.7-16.) Officer Andreoli then proceeded with his investigation, during the course of which he also discovered that West's liability insurance was expired. (Tr., p.12, L.25 – p.13, L.6.) Officer Andreoli requested identification from both West and his passenger, and then called into dispatch to run a records check on each of them. (Tr., p.14, Ls.1-7.)

While Officer Andreoli was receiving the records check from dispatch and writing out the citations, the canine unit arrived, was briefed, and a drug-detection dog was deployed outside of West's car. (Tr., p.14, L.20 – p.15, L.9.) The dog alerted to the presence of marijuana, which was ultimately discovered by officers. (Tr., p.48, L.2 –

p.49, L.17.) Officer Andreoli then gave West his Miranda¹ warnings, after which West admitted to both using and selling marijuana. (Tr., p.34, Ls.8-23.)

The state charged West with possession of marijuana with the intent to deliver and possession of paraphernalia. (R., pp.125-26.) West moved to suppress the evidence obtained during the traffic stop, alleging that the traffic stop violated West's constitutional rights. (R., pp.51-63.) The state objected to the motion (R., pp.84-100), and the district court held a hearing on the matter (R., pp.118-21; see also Tr.). The district court, finding both that Officer Andreoli did not delay the detention to await the arrival of the drug-detection dog, and that even if the officer had expanded the investigation, such an expansion would have been supported by reasonable suspicion, denied West's motion to suppress. (Tr., p.80, L.15 – p.84, L.15.)

Thereafter, West pled guilty pursuant to a conditional plea agreement, preserving his right to appeal from the denial of his suppression motion. (R., pp.122-24, 142-44.) The district court entered judgment against West and imposed a sentence of five years with two years fixed on Count I and a concurrent sentence of 90 days on Count II. (R., pp.146-48.) The district court retained jurisdiction, recommending that West be placed in the traditional rider program and participate in substance abuse programs. (Id.) After the period of retained jurisdiction, the district court suspended its sentence and placed West on probation for five years. (R., pp.171-76.)

West filed a notice of appeal timely from the original judgment. (R., pp.150-52.)

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

ISSUE

West states the issue on appeal as:

Did the district court err when it denied Mr. West's motion to suppress evidence obtained in violation of Article I, § 17 of the Idaho Constitution and the Fourth Amendment to the United States Constitution?

(Appellant's brief, p.7.)

The state rephrases the issue as:

Has West failed to show error in the district court's denial of his motion to suppress evidence?

ARGUMENT

West Has Failed To Show Error In The District Court's Denial Of His Motion To Suppress Evidence

A. Introduction

West challenges the district court's denial of his motion to suppress arguing that Officer Andreoli unlawfully extended the traffic stop which led to the discovery of his drugs. (Appellant's brief, pp.8-16.) The district court concluded both that the traffic stop was not unlawfully extended and, notwithstanding that fact, that Officer Andreoli had reasonable suspicion to expand his investigation if that were necessary. (Tr., p.80, L.15 – p.83, L.24.) Application of the correct legal standards to the facts established in relation to West's suppression motion supports both the district court's determination that the length of detention was constitutionally reasonable, and its determination that Officer Andreoli had reasonable suspicion to investigate further.

B. Standard Of Review

In evaluating a ruling on a motion to suppress, the Court accepts the trial court's findings of fact which are supported by substantial evidence, but freely reviews the application of constitutional principles to the facts as found. State v. Faith, 141 Idaho 728, 730, 117 P.3d 142, 144 (Ct. App. 2005); State v. Atkinson, 128 Idaho 559, 561, 916 P.2d 1284, 1286 (Ct. App. 1996). At a suppression hearing, the power to assess the credibility of witnesses, resolve factual conflicts, weigh evidence, and draw factual inferences is vested in the trial court. State v. Valdez-Molina, 127 Idaho 102, 106, 897 P.2d 993, 997 (1995); State v. Schevers, 132 Idaho 786, 789, 979 P.2d 659, 662 (Ct. App. 1999).

C. West Has Failed To Establish That The Traffic Stop Was Unlawfully Extended

The Fourth Amendment of the United States Constitution provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. Const. amend. IV. While routine traffic stops by police officers implicate the Fourth Amendment’s prohibition against unreasonable searches and seizures, the reasonableness of a traffic stop is analyzed under Terry v. Ohio, 392 U.S. 1 (1968), because a traffic stop is more similar to an investigative detention than a custodial arrest. Delaware v. Prouse, 440 U.S. 648, 653 (1979); State v. Sheldon, 139 Idaho 980, 983, 88 P.3d 1220, 1223 (Ct. App. 2003). “An investigative detention is permissible if it is based upon specific articulable facts which justify suspicion that the detained person is, has been, or is about to be engaged in criminal activity.” Sheldon, 139 Idaho at 983, 88 P.3d at 1223 (citing Terry, 392 U.S. at 21; United States v. Cortez, 449 U.S. 411, 417 (1981)). An investigative detention based on reasonable suspicion must not only be justified at its beginning, but must be conducted in a manner that is reasonably related in scope to the circumstances which justified the interference in the first place. Florida v. Royer, 460 U.S. 491, 499-500 (1983); Terry, 392 U.S. at 20-21.

“The purpose of a stop is not permanently fixed, however, at the moment the stop is initiated, for during the course of the detention there may evolve suspicion of criminality different from that which initially prompted the stop.” Sheldon, 139 Idaho at 984, 88 P.3d at 1224. Routine traffic stops may turn up suspicious circumstances which could justify an officer asking questions unrelated to the stop. State v. Myers, 118 Idaho 608, 613, 798 P.2d 453, 458 (Ct. App. 1990). “The officer’s observations, general

inquiries, and events succeeding the stop may—and often do—give rise to legitimate reasons for particular lines of inquiry and further investigation by an officer.” Id.

Initiating a traffic stop based on observations of a traffic infraction is *per se* reasonable. Whren v. United States, 517 U.S. 806, 810 (1996). The Idaho Supreme Court has also stated that “a police officer’s brief detention of a driver to run a status check on the driver’s license, after making a valid, lawful contact with the driver, is reasonable for purposes of the fourth amendment.” State v. Godwin, 121 Idaho 491, 495, 826 P.2d 452, 456 (1992). Directing a temporarily detained driver to step outside of the vehicle, whether for convenience or safety, is reasonable. See Pennsylvania v. Mimms, 434 U.S. 106, 111 n.6 (1977). And questioning a driver regarding drugs or alcohol use is part of a reasonable investigation, even if that was not the purpose of the stop. See State v. Grantham, 146 Idaho 490, 496, 198 P.3d 129, 134 (Ct. App. 2008); State v. Parkinson, 135 Idaho 357, 362-63, 17 P.3d 301, 306-07 (Ct. App. 2000).

The passengers of a vehicle are also seized during a traffic stop. Brendlin v. California, 551 U.S. 249, 258-59 (2007). Courts that have considered the question have found that asking passengers about their destination and purpose is part of a reasonable traffic investigation. United States v. Pack, 612 F.3d 341, 351 (5th Cir. 2010); United States v. Brigham, 382 F.3d 500, 508 (5th Cir. 2005); United States v. Linkous, 285 F.3d 716, 719 (8th Cir. 2002); People v. Williams, 696 N.W.2d 636, 641 (Mich. 2005); Parker v. State, 297 S.W.3d 803, 809 (Texas App. 2010). Likewise, requests for identification from passengers during traffic stops are routine and accepted as part of a Terry stop. See Hiibel v. Sixth Judicial Dist. Court of Nevada, Humboldt

County, 542 U.S. 177, 185-86 (2004); U.S. v. Diaz-Castaneda, 494 F.3d 1146, 1152-53 (9th Cir. 2007) (specifically applying Hiibel's ruling to passengers).

Even though detentions must ordinarily be temporary and last no longer than necessary to effectuate the purpose of the stop, when the investigative detention discloses evidence of other possible crimes, officers may extend the detention's duration and expand the investigation's focus. State v. Brumfield, 136 Idaho 913, 916-17, 42 P.3d 706, 709-10 (Ct. App. 2001). A drug-detection dog's sniff of the outside of an automobile need not be justified by suspicion of drug activity because it is not a "search" that implicates a privacy interest. Illinois v. Caballes, 543 U.S. 405, 408 (2005); State v. Martinez, 136 Idaho 436, 442, 34 P.3d 1119, 1125 (Ct. App. 2001). However, "[w]hen a reliable drug-detection dog indicates that a lawfully stopped automobile contains the odor of controlled substances, the officer has probable cause to believe that there are drugs in the automobile and may search it without a warrant." State v. Yeoumans, 144 Idaho 871, 873, 172 P.3d 1146, 1148 (Ct. App. 2007) (quoting State v. Gibson, 141 Idaho 277, 281, 108 P.3d 424, 428 (Ct. App. 2005)).

From the moment Officer Andreoli initiated the traffic stop to the moment the drug-detection dog alerted on West's stash of marijuana, the officer conducted his traffic investigation in a manner consistent with the requirements of the Fourth Amendment. Officer Andreoli initiated the traffic stop when he personally observed West commit a traffic infraction, failing to properly signal. (Tr., p.8, Ls.11-25.) Upon contacting West, Officer Andreoli observed that West had barely lit a cigarette, was acting unusually agitated and nervous, and wore a medallion celebrating what West later referred to as "the universal pothead time" of 4:20. (Tr., p.10, L.5 – p.12, L.8; p.18, Ls.1-7.) Officer

Andreoli requested a canine unit from dispatch and continued his traffic investigation. (Tr., p.13, Ls.12-16.) During the course of that investigation, Officer Andreoli learned that West's insurance had expired (Tr., p.12, L.25 – p.13, L.6), allowing the officer to expand his investigation to that separate offense. See Sheldon, 139 Idaho at 984, 88 P.3d at 1224. While Officer Andreoli was still running the record's check, the canine unit arrived on scene. (Tr., p.14, L.20 – p.15, L.4.) For their safety, Officer Andreoli had West and his passenger exit and step away from the car as the certified drug-detection dog was deployed on the outside of the vehicle. (Tr., p.15, L.5 – p.17, L.9; p.22, Ls.8-18.) Before Officer Andreoli finished filling out the citations for the traffic offenses, the dog alerted to the presence of narcotics. (Tr., p.30, Ls.1-7.)

On appeal, West argues that Officer Andreoli unlawfully extended the duration of the traffic stop. (Appellant's brief, pp.8-16.) Review of the record in light of the correct legal standards, set forth above, shows that Officer Andreoli did no such thing. Most relevant, Officer Andreoli was actively engaged in his traffic investigation, running driver's licenses, searching for warrants for both West and his passenger, and completing the citations, throughout the entire encounter. (Tr., p.35, L.15 – p. 36, L.4.) In fact, Officer Andreoli had not yet finished writing the citation or running the records check when the drug-detection dog arrived and alerted to the presence of narcotics in the vehicle. (Tr., p.14, L.20 – p.15, L.4.) See also Parkinson, 135 Idaho at 362-63, 17 P.3d 306-07 (no Fourth Amendment violation found where, while one officer finished his traffic violation investigation and citation, another officer investigated a separate drug crime, where the duration of the traffic violation detention was not extended by the second officer's separate investigation).

Moreover, even if officers needed to extend the traffic stop to await the arrival of the drug-detection dog, the district court found, based on the totality of the circumstances, that Officer Andreoli had specific articulable suspicion of drug activity justifying an expanded investigation. (Tr., p.82, L.18 – p.83, L.24.) This finding is supported by the record. As testified to by the officer, he observed West leaving a known drug house. (See Tr., p.6, L.11 – p.7, L.20.) When he pulled West over, he observed that West had just recently lit a cigarette, which he knew based on his experience was a common thing for people to do in order to mask odors of drugs and alcohol. (Tr., p.10, Ls.5-21.) See also Brumfield, 136 Idaho at 916-17, 42 P.3d at 709-10 (recognizing the significance of suspects using masking odors, such as a cigar, in attempting to cover drug odors). West also “appeared extremely nervous” and “was visibly shaking,” which based on the officer’s experience was not common during routine traffic stops. (Tr., p.11, Ls.7-22.) And finally, West was wearing a hemp necklace bearing a medallion embossed with “4:20,” which the officer knew from his training and experience to be a reference to marijuana use, and which West later admitted to the officer was the “universal pothead time.” (Tr., p.11, L.23 – p.12, L.8; p.18, Ls.1-7.) Based on those specific, articulable facts, any expansion of Officer Andreoli’s traffic investigation into a drug related crime would have been reasonable.

Officer Andreoli had reasonable suspicion to pull over West, due to West’s traffic infraction. Requesting identification for West and his passenger did not unlawfully extend the detention’s duration. Running standard records checks and writing up the traffic citations did not extend the detention’s duration. Diligently performing those duties while awaiting the arrival of the canine unit did not extend the detention’s

duration, especially where the drug-detection dog located the drugs before Officer Andreoli finished the citations. The drug-detection dog's alerts gave probable cause for the search of West's vehicle. Officer Andreoli's investigation complied with the standards required by the Fourth Amendment, and at no time was the traffic stop unlawfully extended. The district court correctly denied West's motion to suppress and should be affirmed.

CONCLUSION

The state respectfully requests that this Court affirm the judgment of the district court.

DATED this 22nd day of October, 2012.



RUSSELL J. SPENCER
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of October, 2012, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

SPENCER J. HAHN
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



RUSSELL J. SPENCER
Deputy Attorney General

RJS/pm